[Mr. K. C. Raja Raja Varma.]

PRESIDENT: You have already made that suggestion. It will be very much better if a motion for adjournment is made by some member. There is real difficulty.

MR. V. SUBBA AIYAR: Sir, I move that this discussion be postponed to this evening.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I further propose that this be taken up at 4 P. M.

PRESIDENT: If the House has no objection, we may take it up at 4 O'clock.

The question that the discussion of the Ezhava bill be postponed to 4 P. M. was put to the vote and carried.

THE HIGH COURT REGULATION AMENDMENT BILL.

PRESIDENT: We will now pass on to the consideration of the Select Committee's report on the High Court Regulation Amendment Bill.

MR. V. SUBBA AIYAR: I beg to present the report of the Select Committee on the High Court Regulation Amendment Bill and move that the same be taken up for consideration.

MR. S. PARAMESVARA AIYAR: I second it.

PRESIDENT: There are no amendments to the preamble or to clauses 1 and 2. I take it that the House accepts them.

The question that the preamble and clauses 1 and 2 as settled by the Select Committee stand part of the bill was put and carried.

The preamble and clauses 1 and 2 were added to the bill.

Clause 3.

PRESIDENT: Mr. Raja Raja Varma, will you please move your amendment?

MR. K. C. RAJA RAJA VARMA: May I move my amendments (1) and (2) together? Both relate to clause 3. My notice was as follows:

(1) Substitute the words "not more than three" for the words "not less than three"; and

(2) add the following at the end of the clause:

"Provided that additional Judges not exceeding two may be appointed to the High Court for such period as may be required."

My amendment to clause 3 will be complete only by combining the two amendments.

PRESIDENT: I think you have withdrawn amendment (3). Now you want to combine the first two amendments. I see no harm in your doing it. You may do so.

MR. K. C. RAJA RAJA VARMA: Clause 3 of the bill lays down that the High Court shall consist of a Chief Justice and not less than three other judges. This clause therefore prescribes that the minimum

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number of judges required to constitute the High Court will be four at all times. My submission is that this provision would sometimes lead to difficulties which it is the duty of the legislature to obviate. When there are only four judges in the High Court as in former years, and when one of the judges resigns his post or ceases to exist unfortunately, whether the remaining three judges will be able to discharge their functions properly will be a matter of great doubt and difficulty. The use of the word "shall" in the clause will lead one to infer that the High Court should always consist of not less than four judges including the Chief Justice, and that any number less than that will not legally constitute the High Court. It is to give definiteness to the number of Judges that I suggest the substitution of the words "not more than three." That is one of the difficulties which the present clause would lead to.

Another defect is that in such cases in all statutes it is the *maximum* number that is fixed. In British India it is the *maximum* that is fixed, leaving the power to His Majesty to fix the number of judges for a particular High Court. The maximum fixed there is twenty. His Majesty is empowered to fix any number not exceeding twenty for any particular High Court. The Madras High Court has got fourteen judges, while the Patna High Court has only six judges. I therefore think that it is better to fix the maximum. That is why I suggested "not more than three" instead of "not less than three."

But, sometimes, the necessity for appointing additional judges may arise. Till a few years ago, there were only four judges in the High Court; but the volume of cases pending there increased so that the necessity of appointing more judges was felt and two additional judges were appointed. When the file of the High Court becomes reduced to the normal level, there may not be any necessity for continuing the two additional judges. My proposal is that there should be four permanent judges in the High Court, and if necessity arises for the appointment of additional judges to clear off the arrears, the Government may be empowered to appoint additional judges. Therefore, I propose that the High Court should consist of the Chief Justice and not more than three judges, provided that additional judges not exceeding two may be appointed to the High Court for such period as may be required. I do not think there will be any necessity for appointing more than six judges at any time; and, therefore, I have limited the number of additional judges to two. I move that the amendment may be accepted.

MR. T. K. VELU PILLAI: I second it.

MR. V. SUBBA AIYAR: Sir, I beg to oppose the amendment. In the first place, what is ordinarily done is to fix the number of permanent judges and to leave the number of additional judges to the discretion of Government. The contingency that my friend contemplates will always arise, because, when one of the judges is on leave or is dead, another judge may have to be appointed.

PRESIDENT: In such cases we appoint a substitute the same day or the very next day.

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[Mr. T. K. Velu Pillai.]

MR. V. SUBBA AIYAR: If the necessity to increase the number of permanent judges arises, then also the law will stand in its way. If the maximum is to be fixed, it should be fixed higher. If Mr. Raja Raja Varma will propose a higher maximum, I have no objection.

MR. K. C. RAJA RAJA VARMA: I propose five to be the maximum.

MR. V. SUBBA AIYAR: As it stands, I do not think it is necessary to accept the amendment.

PRESIDENT: Do you press your amendment, Mr. Raja Raja Varma?

MR. K. C. RAJA RAJA VARMA: In case the contingency is not likely to arise, I do not press my amendment.

PRESIDENT: We can only speak as human beings can. We cannot say that it would never arise. It can happen only rarely.

MR. K. C. RAJA RAJA VARMA: In that case, I withdraw the amendment. I have withdrawn the next amendment also as it is more a matter of administrative detail.

The amendment was by leave withdrawn.

MR T. K. VELU PILLAI: I move that the following be added to clause 3:

"(a) Not less than 50 per cent. of the total number of Judges including the Chief Justice should be appointed from among High Court Vakils or barristers of not less than 10 years' standing and the Chief Justice shall always be directly appointed from the bar".

Sir, the amendment embodies a very healthy principle that has to be kept in view in the appointment of High Court Judges. The Vakils' Association has been passing resolutions from time to time requesting Government to follow this rule; and although Government were prepared to consider the question sympathetically on certain occasions they have not hitherto been prepared to accept it as a general proposition.

Sir, this proposition is one which is very valuable from the standpoint of the citizens' rights. We find people who have had no practice worth the name some years back becoming Munsiffs and by the shifts and turns of fortune in the course of a few years they come and occupy a seat in the highest judicial tribunal of the State. We also find people who begin their careers as successful vakils remaining as vakils for ever, because they do not agree to accept a small appointment in their early days. I am not speaking this from the standpoint of vakils unable to get a position. I know there are several vakils who would not agree to accept a High Court Judge's post. But, all the same, unless this healthy rule is recognised, the bar is likely to deteriorate in true efficiency. Appointments are now being made in the judicial department according to the rule of seniority. According to the present practice, a lawyer has little chance of a judgeship in the High Court unless he accepts a humble place and starts his official career from the lower rungs of the

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ladder. I think that the existence, in the bar, of a certain number of individuals, who may not accept small posts, is essential for the proper administration of justice, because, when it comes to close quarters it is the vakil who has to protect the rights of the subjects of His Highness the Maha Raja. Therefore, vakils should be encouraged to pursue their most useful avocation in order to give confidence to litigants, and in order also to see that their services are made available to the tribunals.

MR. G. PARAMESVARAN PILLAI: He says "direct from the bar". Is it confined to the bar in Travancore or does he contemplate the bar elsewhere also?

MR. T. K. VELU PILLAI: Sir, the words speak for themselves.

MR. G. PARAMESVARAN PILLAI: The amendment is not clear. I therefore ask for information as to whether the member restricts the application of the clause to Travancore alone.

PRESIDENT: He interprets it in the ordinary sense.

MR. T. K. VELU PILLAI: As I said before, I want the words to be given their plain meaning. This is not a matter which is difficult to understand. I have always stood for the principle that as a rule Travancoreans alone should be appointed to all posts in our service. But I do not think that, if there is a very great man outside Travancore, a man of outstanding capacity and character, willing to serve us for the salary we offer and if there is no proper man within the State—I do not think there will be very many cases like that—I do not think that he should not be appointed simply because he happens to be an outsider. I have therefore made the provision elastic. I can assure my friend Mr. Paramesvaran Pillai that nothing can be farther from my intention than to keep the posts in Travancore open for the benefit of foreigners.

Regarding the latter part of the amendment, I may say that I entertained this idea of putting in an amendment some weeks ago when Mr. C. P. Ramaswami Aiyar, now Member of the Executive Council, Madras, addressed the members of the local High Court Vakils' Association. He emphasised the necessity of appointing the Chief Justice directly from the bar. Coming as it did from a gentleman of such eminence and experience—

RAO BAHADUR K. A. KRISHNA AIYANGAR: May I ask Mr. Velu Pillai whether Mr. C. P. Ramaswami Aiyar said that as a rule for adoption in Travancore or whether he said that while relating the traditions of the English bar?

MR. T. K. VELU PILLAI: I only mentioned what actually took place. I am not for accepting a maxim because a particular person advocated it. But in this instance I thought there was considerable force in the view advanced by Mr. C. P. Ramaswami Aiyar. He did not say that that rule should or should not apply to Travancore. He thought that it was a sound principle of choice which should apply to all enlightened Governments. Judges should as far as possible be

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[Mr. J. John Nidiry.]

chosen from members of the bar. That appears to be the practice in most of the civilised countries of the world. That is what is done in England. That is what is done in British India. There are various advantages in following that principle. In the first place, when the members of the legal profession realise that men of great capacity and sound experience will be elevated to the Bench they will steadily qualify themselves for that high position, and when one is so elevated, he will treat the lawyers with greater respect than other judges might do. I do not propose to say anything more with regard to this amendment. I am sure that, if it is accepted, it will accrue to the benefit, both direct and indirect, of His Highness the Maha Raja's subjects, as the practice will create healthier traditions than we have at present. I would, therefore, commend this amendment to the acceptance of this House.

MR. N. PADMANABHA PILLAI: I second it.

MR. V. SUBBA AIYAR: I oppose the amendment. What my learned friend wants is that there should be a hard and fast rule whereby 50 per cent. of the judges in the High Court should be recruited from the bar. To Mr. Paramesvaran Pillai's question as to whether the mover proposes to confine the selection to the members of the local bar or whether the selection may also be made from the bar outside Travancore, he says that it means what it would mean ordinarily. Therefore I take it that 50 per cent. of the judges may be from vakils practising *outside* Travancore.

MR. T. K. VELU PILLAI: May I ask whether the Travancore Government generally go outside when there are men in Travancore?

MR. V. SUBBA AIYAR: The amendment says that barristers and vakils of more than ten years' standing are eligible for the post of a High Court Judge; and in reply to a specific question it was said that the mover was not prepared to confine it to Travancore, and therefore the scope of selection is unlimited and it may apply to the bar outside also. I do not think that it will be acceptable to the House. The amendment proposes a serious innovation and is likely to lead to very serious inconveniences. The Government are alive to the claims of the bar to seats on the Bench, and I believe it will be within the knowledge of the House that whenever opportunities arise such appointments are being made.

MR. T. K. VELU PILLAI: How many of such appointments have been made during the last ten years?

MR. V. SUBBA AIYAR: Whenever opportunities arose and whenever men with proper qualifications were available, such appointments have been made. The late Mr. Kochukrishna Marar was appointed and after him Mr. K. G. Sesha Aiyar.

MR. J. JOHN NIDIRY: May I know the practice elsewhere?

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MR. V. SUBBA AIYAR: Under the statute in British India, one-third of the High Court Judges shall be civilians, one-third barristers and the remaining one-third has not been named. There is considerable agitation there to remove this restriction.

There are only four judges in the Travancore High Court. If the choice was restricted to the Travancore bar—Mr. T. K. Velu Pillai was good enough to admit that there are persons in the bar who are willing to decline the honour even if offered—ordinarily it is only when a person is past fifty years of age that he has a chance of getting himself appointed as High Court Judge, and he will have to retire soon after the appointment.

MR. T. K. VELU PILLAI: Is there any law that people should not be appointed before they are fifty?

MR. V. SUBBA AIAR: I am not under cross-examination. I am only referring to past instances. Persons whom the Government or the public consider to be competent are not in a position to accept it. Then, persons with whom the public themselves are not willing to be satisfied will have to be appointed as a matter of course, whether fit or unfit, because 50 per cent. has to be made up somehow or other.

So far as recruitment goes, it must depend upon a variety of circumstances. The number of appointments being very small, the persons already in service have to be taken into consideration. The capacity and character of the persons in service and the relative capacity of the members of the bar are all things to be taken into consideration. If we have a hard and fast rule, a person in service whose character is unquestionable and whose capacity and work are extraordinary may have to be rejected, and a member of the bar, whatever be his qualifications, may have to be appointed. That, I think, will be injustice to the men in service and it will prevent them from discharging their duties properly. While direct recruitment from the bar may be desirable, it is better not to lay down any hard and fast rule in the statute itself.

Further, as regards the Chief Justice and the judges being made not eligible for other offices, I submit that in theory it might hold good. We know the Lord Chancellor of England is both the judicial and the executive head. We find that the Lord Chief Justice of England has been appointed as the Viceroy of India. I do not think that judicial independence—

MR. T. K. VELU PILLAI: May I point out that we have not come to that amendment yet?

MR. V. SUBBA AIYAR: Then, I shall end by saying that I oppose the amendment already moved.

RAO BAHADUR K. A. KRISHNA AIYANGAR: I have all along been an advocate of the rights of the members of the bar for appointments to judicial offices in the State Practically in every vakils' conference I attended, such a resolution was unanimously passed. But it was never the idea of the members assembled in those conferences—

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[Mr. G. Paramesvaran Pillai.]

certainly it was not my idea when I took part in them and supported the resolutions—to suggest that something in the nature of a statutory provision should be embodied in the High Court Bill. The recommendation of the Council in the form of a resolution would, I have no doubt, receive very sympathetic consideration at the hands of the Government. But to put it in the statute will create an amount of cast-iron rigidity which in actual working might lead to results certainly not contemplated by my friend—

MR. T. K. VELU PILLAI: I object to the use of the word 'contemplated'. I do not think Mr. Krishna Aiyangar knows what results were 'contemplated' by me.

PRESIDENT: You cannot object to it, but you may ask for an explanation.

MR. T. K. VELU PILLAI: My friend cannot say what I 'contemplated.'

RAO BAHADUR K. A. KRISHNA AIYANGAR: If it is open to one member of this House to make a psychological diagnosis of the mentality of another, I think I am perfectly in order in assuming at the outset that Mr. Velu Pillai anticipates that the most satisfactory results would follow the appointment of judges from the bar. That is the present frame of mind of Mr. Velu Pillai as I have diagnosed it. I daresay that he is advocating such a radical measure because he sincerely believes that the adoption of such a step will considerably improve the tone and *morale* of the administration of justice in the land. I was only apprehending that, if the recommendation now being made to introduce a statutory provision were adopted, it might lead to a state of things considerably different from what it is now and what he is anticipating. Other qualifications being equal, I submit that efficiency should be the *highest* consideration that the Government should keep in view, whether the appointment is made from the bar or from the service. I certainly am not for laying it down as an inviolable rule that fifty per cent. should be recruited from the service. As the law now stands, all the High Court Judges *may* be recruited from the service. At the same time, it may be to the advantage of the administration of justice in the State to recruit some particular member from the bar to a seat on the High Court Bench. Each vacancy, as it arises, should be considered in detail with reference to the competing claims of the members of the profession and the officers in the service. And while I would submit that the spirit underlying the resolution of Mr. Velu Pillai can certainly not be unacceptable to the profession, the suggestion that it should take the form of a statutory provision in the High Court Regulation is a position to which I feel I cannot accede. I oppose the amendment.

MR. G. PARAMESVARAN PILLAI: Sir, I support the principle of the amendment moved by Mr. Velu Pillai. But in its present form I am sorry I am unable to accept it. It can admit of little doubt

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that, in regard to the promotion of the very efficiency that is being so much advertised, the High Court will add considerably to it in case a decent proportion of the judges comes to be recruited directly from the bar. I wish to emphasise this principle for the attention of the House. But that such recruitment may be made direct from the bar either from Travancore or *elsewhere* is not acceptable to me. If the Travancore bar does not consist of persons competent enough to fill such appointments in the judiciary, I should consider it very early indeed to provide for any fixed percentage being allotted to the members of the bar. If we have to go out of Travancore for the purpose of supplying this definite proportion in the recruitment of judges in our High Court, I, for one, am absolutely unable to accept that position. When the amendment was moved, I wanted to know from the mover as to what he intended to cover by the term "bar". But I did not get an assurance from him that it was going to be confined to the Travancore bar. In this view of the matter, I oppose the amendment.

MR. T. K. VELU PILLAI: The matter is so simple, Sir, that I thought my friends would have no objection to accept the amendment. Mr. Subba Aiyar has used a very ingenious argument that, because I have not inserted the word 'Travancore' in this amendment, he cannot accept it. It is not I, Sir, who have been advocating the appointment of people from outside Travancore. Nothing is farther from me than that I should tell the Council that we should indent upon the services of lawyers who are practising in courts outside the State. Mr. Krishna Aiyangar said that he has diagnosed mental conditions. Sir, in the mouth of an elderly gentleman, the word 'diagnosis' does not lie in this connection, because diagnosis contemplates a pathological condition.

RAO BAHADUR K. A. KRISHNA AIYANGAR: I beg to apologise. That was not the sense in which I used the word. I think that the diagnosis of a mind is a state of things in which a man's mind may be understood.

MR. T. K. VELU PILLAI: I knew fully well that Mr. Krishna Aiyangar would be the last person to say that a member of this Council is labouring under any disease. (*Laughter*). I am only complaining against the loose use of language. Mr. Krishna Aiyangar, who is the Deputy President of this Council, who is the President of one of the most important municipalities in the State, a gentleman who has presided over the deliberations of the Vakils' Conference and a gentleman who should ordinarily command the confidence of the country, such a gentleman comes forward with the very exceptional suggestion that there should not be any very hard and fast rule for the appointment of fifty per cent. of the Judges in the High Court. I know that, on several occasions, resolutions have been passed urging upon the Government the very same proposition. If that was not present to the mind of the Deputy President, I can only feel sorry for the country and for my friend.

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[Mr. T. K. Velu Pillai.]

RAO BAHADUR K. A. KRISHNA AIYANGAR: I beg my friend's pardon. In all the conferences I took part, I urged the desirability of recruiting the judiciary from the bar. I only said that I object to the statutory provision.

MR. T. K. VELU PILLAI: I think this statute is the proper place for the provision. I also want to put in exact ideas before this Council which is to consider the question in a serious spirit. Members of this Council, especially those who are members of the bar, will realise that unless we put forward our case in the most exact form and state the precise allegations in the plaint and the written statement, no court will be able to adjudicate upon it. Therefore, I said that at least fifty per cent. of the number of judges in the High Court should be recruited from the bar. If Mr. Paramesvaran Pillai and Mr. Krishna Aiyangar took exception to this large percentage—

MR. G. PARAMESVARAN PILLAI: Sir, I never took exception to any percentage.

MR. T. K. VELU PILLAI: That is how I understood him.

PRESIDENT: Mr. Paramesvaran Pillai said nothing about the percentage.

MR. T. K. VELU PILLAI: If he has not said that, I am prepared to own that it might have been my mistake and to apologise to him. However, I must point out that vague expressions of sympathy with the idea will not benefit any party. It will not benefit the mover; it will not benefit the opposer; and I am sure it will not benefit the country. My friend Mr. G. Paramesvaran Pillai said that, because I omitted the words 'in Travancore' from the amendment, he is not able to support me. This House knows that Mr. G. Paramesvaran Pillai is one of its most alert and enthusiastic members. Whenever there is any occasion, Mr. Paramesvaran Pillai is always prepared to come forward with amendments and suggestions. If he thought he could accept the amendment with the words 'in Travancore' inserted, he would have come forward with the proposal.

MR. G. PARAMESVARAN PILLAI: I thought I could not move an amendment to an amendment.

MR. T. K. VELU PILLAI: My friend knows that, when there are defects, members can send up amendments.

MR. G. PARAMESVARAN PILLAI: May I just remind my friend that he said that it was a case of deliberate drafting?

PRESIDENT: Only the Government member can bring forward amendments at this stage; non-officials cannot move any amendments now. It requires my permission.

MR. T. K. VELU PILLAI: It is because I credit Mr. Paramesaran Pillai with the knowledge of rules, and because I credit the

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President with the generosity of allowing the necessary amendments, that I said Mr. Paramesvaran Pillai would have brought forward the amendment.

MR. G. PARAMESVARAN PILLAI: Is it that Mr. Velu Pillai prefers to be vague and inexact because the President would allow an amendment?

MR. T. K. VELU PILLAI: I quite understand the meaning of those words. I have already explained my reasons for omitting the words 'in Travancore'. I do not want to take lessons from Mr. Paramesvaran Pillai, of all persons.

MR. G. PARAMESVARAN PILLAI: Nor am I willing to teach him.

PRESIDENT: Let us pass on, please.

MR. T. K. VELU PILLAI: Nobody would in this twentieth century advocate that for high appointments in Travancore people should be brought from outside. I hope that my friend will not suspect that I stand for a policy of bringing in outsiders for judicial appointments.

I only said that, although the rule should be that Travancoreans of learning and ability should be preferred for seats in the High Court, in the same manner as this Council has accepted the principle that in very exceptional cases the Executive Government may be given the power of making selections from outside, we need not peremptorily prohibit an exceptional appointment. That is why I have advisedly, deliberately, and, to my decision, necessarily worded the amendment as it is. It is not a virtue to gloss over things. If my friend opposes it, he is quite at liberty to come forward and say: "Mr. Velu Pillai stands for an erroneous principle." I object to the policy of importing wrong meanings into innocent words. I cannot respect a desire to hunt with the hound and run with the hare. I commend the amendment to the House.

MR. V. SUBBA AIYAR: Sir, I have already said what I had to say on the point. It will be rather very difficult in a State like Travancore to lay a hard and fast rule that fifty per cent. ought to be fixed as the——

MR. T. K. VELU PILLAI: May I remind my friend that in the Indian High Courts there is a proportion fixed?

MR. V. SUBBA AIYAR: Yes, I said that; and I also said that there is an agitation to remove that proportion. I beg to submit that it is not possible to accept the amendment.

PRESIDENT: Do you press the amendment to a division, Mr. Velu Pillai?

MR. T. K. VELU PILLAI: Yes, I press it.

The amendment was put to the vote and lost.

MR. T. K. VELU PILLAI: I ask for a poll.

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[Mr. T. K. Velu Pillai.]

A poll was taken with the following result:

AYES—8.

Mr. C. P. Kochukunju Pillai.	Mr. N. Padmanabha Pillai.
,, T. Kumara Pillai.	,, M. N. Pillai.
,, M. R. Madhava Variar.	,, K. P. Raman Pillai.
,, P. K. Narayana Pillai.	,, T. K. Velu Pillai.

NOES—18.

Mr. I. C. Chacko.	Mr. K. V. Natesa Aiyar.
,, R. Dhanukoti Pillai.	,, N. Nilakanda Pillai.
,, K. George.	,, S. Parameswara Aiyar.
,, L. C. Hodgson.	,, W. H. Pitt.
Rao Bahadur K. A. Krishna Aiyangar.	,, M. Raja Raja Varma.
Dr. N. Kunjan Pillai.	Rao Bahadur K. V. Rangaswami Aiyangar.
Mr. Tariatu Kunjitomman.	Mr. S. C. H. Robinson.
Dewan Bahadur Dr. P. N. Lakshmanan.	,, V. Subba Aiyar.
Mr. K. C. Mammen Mappillai.	,, A. J. Van Ross.

The amendment was declared lost.

MR. T. K. VELU PILLAI: The same feeling of duty impels me to move the next amendment which says:

"(b) The Chief Justice or any of the judges shall, from the date of his permanent appointment as such, not be eligible for any other office in the service of Government."

This amendment is to be added to clause 3.

The object of this amendment, as the House knows, is to secure judicial independence. A desire to improve one's wordly prospects is a characteristic frailty of the human mind. This weakness is sometimes exploited by the Executive Governments as likes and dislikes have a good deal to do with official preferments. We have heard of Jeffrey, Scroggs and Pemberton and we have also heard of kings who fraternised with the judiciary to suppress the rights of their peoples. The popular mind is so sensitive about this matter that some writers have gone so far as to challenge the independence of Eldon and Mansfield and Thurlow because they chose to accept the peerages conferred upon them by the King. The chance of promotion is therefore an avenue to judicial temptation. A judge sitting to do justice in the highest court of the land ought to banish from his mind all thoughts except those of the monitor within and the Almighty above. The notion of worldly preferment and a further accession of pelf and power to himself would make the dictates of his conscience an orchestra of clashing instruments which would lack the essential requisites of harmony. It is not proper to put temptation in the way of judges. They should always feel that the Government, while a party to a suit or proceeding, is not in a better position than an ordinary individual. I have

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no wish to diminish judicial power and authority. My desire is only to place the judges above the thunders of executive wrath and the allurements of executive friendship in the discharge of their sacred duty. The great sage Tiruvalluvar said that detachment from an object means freedom from the troubles which might be brought about by it some time or other. In the same manner, the judges should be made to feel their independence of worldly shackles in regulating the affairs of society. They should feel that they are the vicegerents of God upon the earth in holding the balance even between man and man. There is no method more effective to obtain this result than removing the very source of temptation. There have been cases in Travancore where judges have been attempting to get not merely promotions but also such changes of departments as will enable them to reach the summit of official ambitions with the help of convenient short-cuts. There are examples of High Court Judges having been appointed Peishkars, and Chief Justices having been appointed Dewans. Notwithstanding the fact that our superior judiciary is composed of men of character and learning, the fertile imagination of individuals has frequently attributed to them various motives of self-interest in the decision of cases where the affairs of important and influential persons come in for adjudication. The Executive Government which controls the reins of patronage looms large in the estimation of the best judges. Appetite, Sir, grows by what it feeds on. The whole force of the Executive Government with its legion of high-paid officers and undefined powers of patronage will captivate the mind of the judge who aspires to become Chief Minister. A prospect of this kind may stand between the judge and his duty and hence the necessity to close this avenue of personal ambition. The practice of other countries strengthens my case. Mr. Subba Aiyar referred—

MR. V. SUBBA AIYAR: I did so under a mistake; it was given under the idea that this amendment was before the Council.

PRESIDENT: You may refer to it, Mr. Velu Pillai.

MR. T. K. VELU PILLAI: My friend was not in order; I shall, however, take advantage of his argument. Sir Sankaran Nair's case is an exceptional one, an exception which proves the rule. It is well known that judges in British India are not, as a rule, appointed as members of the Executive Council or to other higher posts. Something was mentioned about the Lord Chief Justice of England becoming the Viceroy of India. Although the Viceroyalty of India carries with it more pay, it does not appear to be a higher office than that of the Lord Chief Justice. It is also worthy of remembrance that Lord Reading was sent to India only after he had served in other capacities. It would not do therefore to ferret out a solitary instance of a judge being appointed as Viceroy. Such appointments are more common in our own State. It is therefore that I have taken this position. I do not object to the practice on personal grounds. But I object to the principle, and I must lay all the emphasis and say: "Save these judges from temptation; save the Government from illegitimate desires; save

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[Mr. Joseph Panjikaran.]

the community from possible miscarriages of justice; and save the judges again from the shafts of calúmny!" I appeal to the patriotism of this Council to accept this amendment which will put the administration of justice on a very much higher footing and will eventually lead to the happiness and prosperity of the people of this ancient land.

MR. M. N. PILLAI: I second it.

MR. V. SUBBA AIYAR: Sir, I oppose the amendment. In the first place, when any particular individual is appointed as Chief Justice, it goes without saying that his character and judicial independence are well recognised and well known. Therefore it is that he is elevated to the highest post in the Judicial Department. That being the case, I believe it will be a slur cast upon the Chief Justice to say that he is aspiring for something else.

MR. T. K. VELU PILLAI: I demur to that. I only said that temptation should be removed.

MR. V. SUBBA AIYAR: I think that a statutory prohibition is not likely to do that.

In the second place, the Dewan, as Mr. Velu Pillai said, is the head of the executive, and the appointment to that place is the peculiar prerogative of His Highness the Maha Raja. His Highness chooses one in whom he has absolute confidence; and therefore one cannot say anything against it.

In the third place, such appointments are made only occasionally. I believe, when Mr. T. K. Velu Pillai refers to 'other' offices, he means the office of the Dewan, as I do not think that a Chief Justice will be appointed as Darbar Physician or as Chief Engineer. There have been only two such instances, though there have been very many Dewans. It is therefore that I said that such a thing occurs only occasionally. Mr. V. Krishnaswami Aiyar and Sir C. Sankaran Nair were elevated from the Bench to Executive Councillorships; and I do not think that anybody would say that they did not maintain their judicial independence. When they were puisne judges, judicial independence was maintained and yet they were promoted.

MR. T. K. VELU PILLAI: Is the gentleman aware that opinion in British India is against the appointment of judges to places in the Executive Government?

MR. V. SUBBA AIYAR: Maybe. But we are concerned with things as they take place and not as they ought to be.

Then, again, I would say that the amendment, if accepted, could be made absolutely ineffective. It is only necessary that the Chief Justice should resign his appointment as such, and accept the Dewan's place.

MR. JOSEPH PANJIKARAN: Am I to understand that Mr. Subba Aiyar means Mr. Velu Pillai's amendment to be that a man should not be the Chief Justice and the Dewan at the same time?

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MR. V. SUBBA AIYAR: No, no. Mr. Velu Pillai says: "from the date of his permanent appointment as Chief Justice". I say that, if he resigns the service to-day, he can be appointed as Dewan to-morrow.

MR. P. K. NARAYANA PILLAI: May I know, if the amendment is so ineffective, why Mr. Subba Aiyar objects to it?

MR. V. SUBBA AIYAR: That is only one of my objections. I have placed other objections also before the House.

For these reasons, I am not in a position to accept the amendment.

PRESIDENT: Do you press this to a division, Mr. Velu Pillai?

MR. T. K. VELU PILLAI: I wish to say a few words. Arguments of a certain type which came from my friend the Law Member have placed me in a position of peculiar advantage, because he has virtually confessed his inability to make his case good on this occasion by advancing two arguments which, I may say, are very unconvincing indeed. My friend tried to show that the appointment of judges is the privilege of His Highness the Maha Raja.

PRESIDENT: Mr. Subba Aiyar named only the appointment of the Dewan.

MR. T. K. VELU PILLAI: That was how I heard him. If Mr. Subba Aiyar—

PRESIDENT: You are not hearing me aright. Mr. Subba Aiyar was referring only to the appointment of the Dewan by His Highness and not of the High Court Judges.

MR. T. K. VELU PILLAI: The amendment relates to the appointment of judges. The nomination of the High Court Judges is surely within the privilege of His Highness the Maha Raja and that privilege will be utilised to the best advantage of the State. When Mr. Subba Aiyar said that His Highness the Maha Raja will not appoint the Chief Justice as the Darbar Physician or the Chief Engineer as the Dewan—

PRESIDENT: I do not think you can argue about the prerogative of His Highness the Maha Raja. Mr. Subba Aiyar did not say that.

MR. T. K. VELU PILLAI: I do not want to say anything about that. That is not in keeping with the dignity of this House or with my own duty or with the exalted position of His Highness the Maha Raja. I only refer to what my friend said. It is no argument to say that the Darbar Physician or the Chief Engineer has not been appointed as Dewan.

PRESIDENT: He did not say that either.

MR. T. K. VELU PILLAI: I would still maintain that these are all rhetorical arguments which cannot commend themselves to the acceptance of this House. Nobody thinks of the Darbar Physician or the Chief Engineer in connection with the Chief Justice or the Dewan. The argument is purely puerile.

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[Mr. T. K. Velu Pillai.]

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: May I ask Mr. Velu Pillai whether elsewhere a Chief Engineer has not been appointed as Dewan?

MR. T. K. VELU PILLAI: I will go one step further and quote the instance of Sir M. Visvesvaraya.

PRESIDENT: You are all proceeding on the assumption that Mr. Subba Aiyar said that the Chief Justice or the Chief Engineer after he has been so some time is appointed as the Dewan. I may tell you that Mr. Subba Aiyar did not refer to that.

MR. T. K. VELU PILLAI: That favours my case still better. The Chief Justice is accepted to be the second man in the kingdom. A man is appointed as the Chief Justice because he has special aptitude for law. That such a man should be appointed on a higher footing in preference to the Chief Engineer or the Darbar Physician is very good indeed. I do not want to dwell on that point any further.

My learned friend then said that, if this amendment is accepted, it would be ineffective and he did not want that. From the height of originality he said that it is quite open to the Chief Justice to resign his appointment and accept the Dewanship. This is not a matter which any body is unaware of. There are what are called resignations, there are what are called retirements. All that we know. It is not always that there will be such bargainings between the person who appoints and the person who is appointed. (*Laughter.*) It is natural that, with the legitimate work of doing one's duty, one might evince a desire to be promoted; but when it comes to a question of resignation, very few people will have the nerve to do it. For when a man leaves his position and does not get another, he will be in hot water indeed. When there are very many people who can accept the position of Dewanship with advantage to themselves and the country, it is not likely that the persons who are responsible for making the appointment would seek for some particular judge of the High Court and tell him: "If you do not come, the whole of Travancore will be destroyed." Such a thing is not likely. Sir, the idea of judicial independence is sacred to me, and, I am sure, it is more sacred to Mr. Subba Aiyar, because he is very much older and more experienced than myself. Unless a Judge feels that there are limitations to his worldly prosperity—unless he feels that he has risen to a sufficient height and sufficient eminence and that the only power above him is God above and the monitor within—unless he realises that he will not be able to do justice sacred in the eyes of God and man, if he aspires for higher positions—he will not be able to administer justice properly. Therefore, I press this amendment for the kind acceptance of my friends and I appeal to my patriotic friends who are the guardians of the interests of Travancore, of the constitutional liberty and welfare of the country, to be so good as to accept the amendment.

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MR. V. SUBBA AIYAR: Sir, evidently Mr. Velu Pillai has misunderstood my position. I said that His Highness does not ordinarily appoint the Chief Justice as the Darbar Physician or as the Chief Engineer but only as the Dewan. That was what I said.

Then with reference to judical independence, I have given a sufficient answer; and I have made it sufficiently clear how ineffective it would be if the amendment is accepted. For, it is only necessary for a judge to resign that place to accept the other. That is the practice obtaining in British India. Therefore, the provision in this regulation will not be active, as there will be no objection to a judge to accept any other post. I leave it to the House to say whether it would be desirable to introduce such a hard and fast rule.

The amendment was put to the vote and declared lost, 16 voting *for* and 18 *against*.

MR. T. K. VELU PILLAI: I demand a poll.

A division was taken with the following result:

AYES—18.

Mr. A. Govinda menon.	Mr. J. John Nidiry.
,, C. P. Kochukunju Pillai.	,, M. N. Pillai.
,, N. Kumaran.	,, N. Padmanabha Pillai.
,, T. Kumara Pillai.	,, Joseph Panjikaran.
,, Tariatu Kunjitomman.	,, K. Paramesvaran Pillai.
,, V. Kunjukrishna Pillai.	,, N. Ramakrishna Pillai.
,, M. R. Madhava Variar.	,, K. P. Raman Pillai.
,, K. C. Mammen Mappillai.	,, K. Dominic Tommman.
,, P. K Narayana Pillai.	,, T. K. Velu Pillai.

NOES—19.

Mr. I. C. Chacko.	Mr. N. Nilakanda Pillai.
,, C. J. Curien	,, G. Paramesvaran Pillai.
,, R. Dhanukoti Pillai.	,, P. Paramesvaran.
,, K. George.	,, S. Paramesvara Aiyar.
,, L. C. Hodgson.	,, W. H. Pitt.
Rao Bahadur K. A. Krishna Aiyangar.	,, M. Raja Raja Varma.
Dr. N. Kunjan Pillai.	Rao Bahadur K. V. Rangaswami Aiyangar.
Dewan Bahadur Dr. P. N. Lakshmanan.	Mr. S. C. H. Robinson.
Mr. K. V. Natesa Aiyar.	,, V. Subba Aiyar.
	,, A. J. Van Ross.

The amendment was declared lost.

The question that clause 3, as amended by the Select Committee, stand part of the bill was then put and carried.

Clause 3 was added to the bill.

The House rose for lunch at 2-15 P. M.

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[Mr. N. Ramakrishna Pillai.]

The Council re-assembled at 3-5 P. M.

Clauses 4 to 6.

MR. K. C. RAJA RAJA VARMA: I beg to move that the words "from time to time" in line 1, clause 4, be deleted. It does not appear that this expression is intended to convey any special additional meaning. Its sense is already conveyed by the words "permanently or temporarily" which are found in line 2 of the clause. Hence it is superfluous and may be deleted.

MR. N. RAMAKRISHNA PILLAI: I second the motion.

MR. V. SUBBA AIYAR: It only makes the meaning a little more clear. Mr. Raja Raja Varma admits that its meaning is conveyed by other words in the clause. So no serious difficulty is likely to arise by the retention of the expression, even if it is a bit superfluous.

PRESIDENT: Why do you want the deletion of these words? They do not seek to do any harm. To me, a layman, there does not seem to be any harm in retaining these words.

MR. K. C. RAJA RAJA VARMA: Then I beg to withdraw the amendment.

The amendment was, by leave, withdrawn.

PRESIDENT: There are no amendments in respect of clauses 5 and 6. The question is that clauses 4 to 6 stand part of the bill.

The motion was carried.

Clauses 4, 5 and 6 were added to the bill.

Clause 7.

MR. K. C. RAJA RAJA VARMA: I beg to move that the word "subordinate" be substituted for "lower" in line 1 of sub-clause (1). The Select Committee itself in one place changed the word 'lower' for the word 'subordinate.' In consonance with the intention of the Select Committee, the word "subordinate" may be substituted in this place also.

MR. N. RAMAKRISHNA PILLAI: I second it.

MR. V. SUBBA AIYAR: I accept the amendment. The word "subordinate" is used in the remaining parts of the bill. Therefore this is only a mistake.

PRESIDENT: Does the House accept the amendment?

The amendment was put to the vote and carried.

PRESIDENT: The question is that clause 7 as amended stand part of the bill.

The motion was put to the vote and carried.

Clause 7 was added to the bill.

Clauses 8 to 10.

MR. N. RAMAKRISHNA PILLAI: I beg to move that the words "and during holidays, a single judge of that Court, to be

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nominated by the Chief Justice" be inserted between the words "Vacation judge" and "shall" in line 2, of the proviso under sub-clause 6; so that the proviso when amended will read thus:

"Provided that, during the annual recess of the High Court, a single judge of that Court, acting as Vacation Judge, *and during holidays, a single judge of that Court, to be nominated by the Chief Justice*, shall have power to dispose of applications for staying execution of decrees of Civil Courts, to suspend sentences of Criminal Courts and to release any person, accused or convicted, on bail or on his own personal recognizance and to transfer civil or criminal cases from one subordinate court to another."

My object in making this amendment is to give power to the Judges to hear bail applications and applications for staying execution of decrees and other matters during holidays. As it is, judges have no power to dispose of these applications during holidays. We have, as a matter of fact, long holidays like the Christmas holidays, Easter holidays, and Onam holidays. In the case, for instance, of the Christmas holidays, the holidays run for about ten or eleven days, so that it is impossible for an accused person to get a hearing during those days.

In my own experience, I have come across two cases, one of which was a case in which the Kottayam Sessions Court convicted a priest and several others and sentenced them to long terms of imprisonment just before the Christmas holidays. When the appeals were preferred by me before the High Court (Appeals Nos. 93 to 97 of 1096), I was not able to get a copy of the judgment of the Sessions Court in time to move for bail before the court closed. When the bail application was taken to the Chief Justice on the day after the court closed, it was found that the judges had power to grant bail only during the vacation and that there was no provision to grant bail during holidays. Another instance which came to my notice was a recent case where a receiver was appointed by the Alleppey District Court just before the vacation commenced. There also, there was some difficulty is getting a copy of the order before the High Court actually closed. It was found impossible to get a stay order as the Easter holidays intervened before the vacation; so that the party had to undergo a considerable amount of inconvenience and difficulty for nearly a week.

I submit that cases like these might occasionally arise and that it would be very hard upon the litigants not to allow bail applications or applications for staying execution proceedings in such cases. It is with a view to obviate such difficulties and to empower judges to hear and dispose of such applications that I propose to introduce this amendment. There can practically be no difficulty in this, because, generally, parties may not care to take such applications during short holidays such as Sundays and other holidays and judges will also be at liberty to ask them to wait or to bring up the applications during court days. I therefore think that the amendment will be accepted by the Council.

MR. K. P. RAMAN PILLAI: I have great pleasure in supporting the amendment so ably moved by Mr. Ramakrishna Pillai. I only suggest for his consideration whether the expression "to be nominated by the Chief Justice" could not be profitably deleted, or at any rate, the words "who shall" may not be substituted for "to", so that it would be

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[Mr. P. K. Narayana Pillai.]

incumbent on the part of the Chief Justice to have a judge nominated always.

PRESIDENT: "To be nominated" conveys the same meaning.

MR. K. P. RAMAN PILLAI: Then, it is all right.

MR. V. SUBBA AIYAR: I do not think it necessary to accept the amendment. If it is accepted, it will lead to inconveniences and difficulties. I doubt whether, even during short holidays, even new moon days, Sundays or such other holidays, there should be a Vacation Judge and applications should be disposed of by him as a single judge. For the purpose of short holidays, it is not thought necessary. That is why for long holidays alone such as the summer vacation there is a Vacation Judge. During ordinary short-term holidays, such as the Onam holidays, such urgent cases will have to wait and will have to be brought before the bench, when the court re-opens after two or three days. Otherwise, it will be seriously interfering with the holidays of the judges and others, and it will be very difficult for them to attend court and do all the work. During holidays, particular clerks will have to be sent for and other arrangements will have to be made. I suppose that a person who works during the vacation has also the benefit of privilege leave and other privileges. No serious consequence is likely to occur if a petition is not disposed of on a Sunday or any other holiday as suggested by my friend. If a person is convicted, of course, until he is bailed, he has to undergo imprisonment. This is inevitable. As for execution matters, certainly it would be ordinarily sufficient if the application is presented and disposed of on the next court day.

MR. J. JOHN NIDIRY: What about the Christmas holidays?

MR. V. SUBBA AIYAR: Even there, it is only ten or twelve days. We are conferring certain powers on a single judge of the High Court. Every Saturday is a holiday for the High Court. Every Sunday is a holiday as also every new moon day. If there should be a Vacation judge to hear and dispose of petitions during these holidays the effect will be to frustrate the object in view. Further, in some instances, it might be that the party would be waiting for some five or eight days and ultimately bring up the petition on a Sunday saying that it is urgent. That would be unnecessary interference with the work, discretion and convenience of the judges. After all, if the inconvenience that is suggested by the learned mover is so great as to necessitate a prompt remedy, then there is no objection. As the amendment stands, a judge will have to be asked unnecessarily to work even during a single holiday or two. I think, that is going too far. I therefore oppose the amendment.

MR. P. K. NARAYANA PILLAI: I also support the amendment. The only consideration that has been urged by the learned Law Member has reference to the leisure of the judges. That is nothing as compared to the liberty of the subject. As such, I think that the amendment ought to be accepted by the House.

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MR. G. PARAMESVARAN PILLAI: I am of opinion that the amendment is very necessary, because the powers to be exercised by a single judge during the vacation are by way of staying execution of decrees of Civil Courts, suspending sentences of Criminal Courts, releasing any person, accused or convicted, on bail or on his own personal recognizance, and transferring civil or criminal cases from one subordinate court to another. So far as the annual recess is concerned, it is all right for there will be a judge on duty. But during the Christmas holidays which oftentimes extend to twelve or thirteen days and the Onam holidays which may extend to six or seven days, it is absolutely necessary that some similar arrangement should be made. My friend Mr. Subba Aiyar stated that it might not be possible to do so and that such an arrangement would also lead to some inconvenience if a judge has to be nominated even when the holidays do not extend beyond a couple of days. It is then open to the Chief Justice to nominate or not to nominate a judge for duty for such a short period. The Chief Justice will reasonably exercise his discretion in the matter. But in the case of the Christmas and the Onam holidays, the Chief Justice ought to exercise his discretion and nominate a judge for duty during those holidays.

MR. K. C. RAJA RAJA VARMA: I would also support the amendment in so far as it applies to the Christmas holidays and the Onam holidays, because, in these cases, the holidays run to a number of days. In cases where the holidays are for only a day or two at a time, I do not think it necessary for the Chief Justice to appoint any one to look after the work during that period. But the case of the Christmas holidays and the Onam holidays is different, for, in such cases, the parties may have to wait for more than a week and they are likely to suffer great hardship. I would suggest therefore, that the words 'Christmas or Onam' be put in between words "during" and "holidays" in Mr. Ramakrishna Pillai's amendment.

PRESIDENT: That is your suggestion, I suppose.

MR. K. C. RAJA RAJA VARMA: Yes.

MR. A. HOOGEWERF: As stated by Mr. Narayana Pillai, the leisure and convenience of a single judge must be sacrificed for the convenience of several individuals. Sometimes, the liberty of a subject will be at stake when he is put in prison and when he is asked to wait for ten or twelve days to put in his application for bail; so I agree with Mr. G. Paramesvaran Pillai in saying that some arrangements should be made for the conduct of work during the Christmas and the Onam holidays. I support the amendment.

MR. JOSEPH PANJIKARAN: I also support the amendment; and in so doing, I would say that it is not only for the Onam and the Christmas holidays that a judge should be nominated but even in cases in which there is only a single holiday. I do not see why there should be an exception in the case of other holidays. It is a question of principle that the subjects of His Highness should not be put to hardship for the convenience of a single judge. It is that principle that we are fighting for.

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[Rao Bahadur K. A. Krishna Aiyangar.]

Suppose a person is convicted. It may be that the conviction would not stand; but, at the same time, if there are two or three holidays intervening before he is able to apply for bail, he may have to undergo imprisonment. Until the conviction is finally upheld why can we not give him a chance of saving his honor and skin? That is the principle involved, and as such, I hope that the amendment would be carried without any restriction and that it would be made a duty binding on the Chief Justice to nominate a judge to dispose of such matters even when there is only one holiday.

RAO BAHADUR K. A. KRISHNA AIYANGAR: If the amendment is restricted to the Christmas holidays, I would support the position as commendable.

MR. JOSEPH PANJIKARAN: What about the Onam holidays?

RAO BAHADUR K. A. KRISHNA AIYANGAR: It is only a matter of four days.

MR. N. RAMAKRISHNA PILLAI: What about the Easter holidays?

RAO BAHADUR K. A. KRISHNA AIYANGAR: The Easter holidays precede the Summer Vacation, and there is not a fairly long period intervening. But so far as the Christmas holidays are concerned, it is a real grievance which should certainly be remedied; and this can be done without any serious sacrifice and dislocation of work. As for the very liberal provision suggested by my friend Mr. Panjikaran that there should be no holidays so far as the High Court is concerned, he is forgetting that there are other courts functioning in the State. There are the Sessions Courts and there are the Divisional Magistrates' Courts. Why they should not be called upon to work during short-term holidays and why the High Court Judges alone should be required —at any rate one of the Judges to attend court on every day in the year, is a position that does not commend itself to me.

MR. JOSEPH PANJIKARAN: I want to know whether bail applications are viewed in the same light by the District Magistrates as they are viewed by the High Court, or the principle of granting bail application in these two cases is the same.

RAO BAHADUR K. A. KRISHNA AIYANGAR: The Criminal Procedure Code specifies the tribunals before which bail applications ought to be moved. The Sessions Courts are not working during holidays; so the bail applications are taken to the High Court.

MR. P. K. NARAYANA PILLAI: I believe that, even during the recess, the Sessions Judges can pass orders on such applications.

RAO BAHADUR K. A. KRISHNA AIYANGAR: Unfortunately they are not at their stations then. Of course, the power of hearing and disposing of emergent applications may be exercised by the High Court in the first instance during the recess; but making a provision to say that the High Court should sit on every gazetted

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oliday is a position which, I think, has not been accepted in any part f British India or in any other Indian State.

MR. JOSEPH PANJIKARAN: May I know whether this point as ever urged before any legislative council or other legislative body?

RAO BAHADUR K. A. KRISHNA AIYANGAR: If he is very articular in having an answer, I would say 'no' because it is palpably nsound.

MR. JOSEPH PANJIKARAN: Would it not be that it did not uggest itself? It may as well be like that, I believe.

PRESIDENT: That is a matter of opinion.

RAO BAHADUR K. A. KRISHNA AIYANGAR: Some would probably subordinate the realities of life and the possibility of real work to heoretical ideas. As the motion stands, I oppose it.

MR. T. K. VELU PILLAI: In further supporting the amendment, I wish to emphasise the point of view that has been urged upon he attention of the House by my friend Mr. Panjikaran. Mr. Krishna iyangar's argument is that, because the Sessions Judges and other fficers are not doing this work during holidays, it would not be proper o saddle a Judge of the High Court with additional work. I fail to see ny force in that argument. Sir, authority, emoluments and position ll these go along with responsibility. As the proverb says, the higher he mountain, the more will be the snow that falls upon its peaks. Ve all know that the higher officers in Travancore have very much nore responsible duties than subordinate officers. For example, take he case of the Dewan. He does not know what a holiday is. The ame is the case even with His Gracious Highness our Maha Raja. So, if a man occupies a high position, that is just the reason why he hould be always willing to do his duty. I remember a passage in Kunjan Nambiar's works which depicts the condition of the world, vhen Yama, the God of death, was not functioning and went out of vork. The result was that population began to rise. Food became carce and starvation became the rule. There was no space for ocomotion and nobody could do anything. So, in the same manner, f the High Court Judge, who is the highest judicial functionary in the and, is dispossessed of his proper powers, the subjects of His Highness vill suffer. I may illustrate my point this way. Suppose a Sessions udge convicts a man and he is in jail. It will be cold consolation ndeed to be told that, because the conviction was entered by the Sessions Judge, the poor prisoner who had the luxury of having been onvicted by the Sessions Judge should not get the remedy which vould be open to one convicted by a lesser officer. Liberty, Sir, is ery valuable. Its violation whether for ten years or for ten seconds s the same; for it is this principle that should command our acceptance. n my own professional experience, I have found that it was very nfortunate that people who come to Trivandrum after so much trouble or filing an appeal and praying for release from custody on bail are ut to the necessity of waiting for several days, because of the Onam r some other holidays intervening. And there are numerous holidays

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[Mr. V. Subba Aiyar.]

indeed for those in the Travancore service. I cannot find any difference between a man being choked with want of liberty and a man being choked with want of air. Liberty is as important for life as air and water. So I am happy to associate myself with the sentiments expressed by Mr. Panjikaran and I support the amendment.

MR. N. RAMAKRISHNA PILLAI: I do not see any difficulty or inconvenience in adopting this provision. In the cases I mentioned, especially in the case where the accused was convicted and sentenced to rigorous imprisonment, I took the matter myself to the Chief Justice, and the Chief Justice was very sympathetic to me and very anxious to grant the bail. Nevertheless, as there was no provision, the difficulty was found to be insurmountable. The accused was let on bail after the holidays and eventually acquitted. That appeared to be a very hard case. The other case in which a receiver was appointed was a civil case in which the amount involved was very large. In that case, when the party got a copy of the order, it was too late to be filed in court before the commencement of the Easter holidays and he had to undergo considerable difficulty and inconvenience owing to the fact that the Vacation Judge began to function only five or six days after the vacation actually commenced. That was also a very hard case. Mr. Subba Aiyar said that it would be giving unnecessary trouble and inconvenience to the judge. I find that there is absolutely no inconvenience to the judge. He need not attend court at all. The vakils would take the applications to the judge's house, as is generally done during the vacation. The matter could be disposed of soon and there will be absolutely no difficulty or inconvenience for the judge to hear and dispose of these applications at home. I may also point out that there will be very many instances in which delay would be very dangerous, and that to make no provision for such cases will be a very serious denial of justice to the parties concerned.

Mr. Raman Pillai said that there was no necessity for the words "to be nominated by the Chief Justice". I inserted the expression because it is the Chief Justice who regulates the procedure of the court. The party also will find it difficult to get an order unless he knows where he has to go.

MR. K. P. RAMAN PILLAI: What I mean is that, in case that expression is deleted, every one of the judges will be empowered to hear such petitions, so that a vakil may choose his own judge. (*Laughter.*)

MR. N. RAMAKRISHNA PILLAI: I thought that the practice obtaining in the High Court in similar matters was for the Chief Justice to nominate a Judge. Hence I put the amendment in that form. I submit that, under the circumstances already mentioned, there cannot be any objection to accept the amendment, and I hope that the House would accept it.

MR. V. SUBBA AIYAR: Sir, I said distinctly that, if the amendment were accepted, it would mean that for every Saturday or

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Sunday or other holidays there would have to be a holiday judge to attend to the work of disposing of these applications. In the matter of applications for bail, ordinarily the Magistrate grants the bail, and if he refuses it, the District Magistrate or the Sessions Judge is approached; and if he too refuses, then the matter comes up before the High Court, so that one officer has already exercised his discretion in the matter. As the amendment stands, it will include even a Sunday, while there may also be another holiday in a particular week, and sometimes, among holidays there may be Saturdays. To say that even on such holidays the applications for bail and other applications should be heard and disposed of by the High Court is, so far I can personally see, rather too much. There may be some hardship during long-term holidays as in the case of the Christmas holidays. But, as it stands, the amendment applies to all holidays irrespective of their length.

MR. T. K. VELU PILLAI: May I know whether it is simply because of the possibility of infringing the judge's leisure that Mr. Subba Aiyar is against the amendment?

MR. V. SUBBA AIYAR: Not only that. No other court anywhere works on a Sunday or any other holiday. For instance, if a man is convicted on a Saturday after trial at Parur, it may take him a couple of days for moving the High Court for bail. It is not possible in such cases that the moment he is convicted he should be let on bail. There must be a certain amount of appropriateness in the thing. To ask that a person should be let on bail until he is found to be guilty by the High Court or that a petition to stay an order passed by the execution court as to whether a decree should be executed or not should be disposed of even on a Sunday—I would say with all deference to my friend—is rather verging on the frivolous.

MR. K. P. RAMAN PILLAI: In case the amendment is carried, are we to understand that one judge will have to attend court during holidays?

MR. V. SUBBA AIYAR: Yes, he will have to register the application and send for the clerks concerned for dealing with matters incidental to it; and if there is no particular clerk, he will have to do all the things himself. That means unnecessary interference with a judge's holidays which every officer is entitled to. On the other hand, in the case of the Christmas holidays, I can understand that there may be some hardship. As the amendment stands, on every Sunday even if he be a Christian judge, he must be in a position to hear and dispose of these petitions.

MR. T. K. VELU PILLAI: Can the Darbar Physician, for example, plead inability to attend an urgent case because it is a Sunday?

MR. V. SUBBA AIYAR: It is not a case of that kind. This is not an urgent matter in which a man's life will be lost. If it is a case of a bail application where the Magistrate and the Sessions Judge have exercised a discretion and where the applicant comes up before the High Court and says that they have gone wrong, what is the hurry about it?

MR. K. P. RAMAN PILLAI: What about the conviction by Sessions Judges themselves?

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[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR: Even there, if there are one or two holidays, the application will be taken up after the expiry of those holidays.

MR. T. K. VELU PILLAI: Will Mr. Subba Aiyar refuse a case because it is a holiday?

MR. V. SUBBA AIYAR: That is quite a different matter. I will be able to look into the matter, but no court will be in a position to hear the case because the court is not sitting.

MR. T. K. VELU PILLAI: May I know whether on that ground he will refuse a case?

MR. V. SUBBA AIYAR: I do not think that there is any analogy between the two.

If the amendment is carried, the result will be that, even on a Sunday which is religiously observed by a judge, he will have to attend court. The amendment is not restricted to the Christmas or the Onam holidays. On every holiday, a judge will have to sit and hear the petitions. Nowhere is this practice obtaining. Everywhere, the liberty of the subject is taken very great care of. That being the case, I think it is rather going too far to say that on every holiday the court should be held. If the amendment is restricted to the Christmas holidays, I shall certainly accept it. I will include the Onam holidays even.

MR N. RAMAKRISHNA PILLAI: I press the motion to a division.

PRESIDENT: The Law Member says that, if it is confined to Christmas and the Onam holidays, he will have no objection to accept the amendment.

MR. A. HOOGEWERF: I shall support it.

PRESIDENT: There is no such amendment before the House. I am asking the mover of the amendment.

MR. N. RAMAKRISHNA PILLAI: I want the amendment to be put to the vote in the form in which I have proposed it.

MR. A. HOOGEWERF: I want to move an amendment. I propose that the holidays be restricted to the Christmas and the Onam holidays.

PRESIDENT: Do you want the word "Christmas and Onam" to be inserted? Then you will have to move it as an amendment.

MR. N. RAMAKRISHNA PILLAI: I will suggest an amendment, *i. e.*, "during holidays of more than three days' duration" in the place of "during holidays" in my original amendment.

PRESIDENT: That will be putting it on a number. Are you prepared to accept it, Mr. Subba Aiyar?

MR. V. SUBBA AIYER: It is better to put it as four instead of three. Ordinarily we often get three holidays consecutively.

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PRESIDENT: There may be special holidays on special occasions which may exceed three days at a time. We may have it as "during consecutive holidays of more than three days' duration".

MR. N. RAMAKRISHNA PILLAI: Then I move that the words "during consecutive holidays of more than three days' duration" be substituted for "during holidays" occurring in my proposed amendment.

MR. V. SUBBA AIYAR: I second the motion.

PRESIDENT: The question is that the words "during consecutive holidays of more than three days' duration" be substituted for the expression "during holidays".

The House agreed to the amendment being modified accordingly.

PRESIDENT: The question is that the following expression be inserted between "judge" and "shall" in line 2 of the proviso to clause 8:

"and during consecutive holidays of more than three days' duration, a single judge of that Court to be nominated by the Chief Justice."

The motion was put to the vote and carried.

PRESIDENT: The question is that clause 8 as amended, and clauses 9 and 10 in respect of which no amendments have been tabled, stand part of the bill.

The motion was put to the vote and carried.

Clauses 8, 9 and 10 were added to the bill.

Clause 11

MR. J. JOHN NIDIRY: I beg to move that the word "or" be substituted for the word "and" in line 3.

My reason for bringing forward the amendment is this. As this clause stands, for an appeal to be heard by a full bench, two conditions are necessary, *viz.*, that (1) the value of the suit in the original court should be Rs. 5,000 or above, and that (2) the value of the subject matter in appeal should also be Rs. 5,000 or above. I submit that *either* of these conditions should alone be held to be sufficient for an appeal being heard by a Full Bench, because there may be hard cases in suits relating to improvements.

I shall illustrate my position by an example. Suppose a mortgagor files in a District Court a suit for redemption the mortgage amount of which is Rs. 2,000 and suppose the mortgagee has made improvements on the property to the extent of, say, Rs. 40,000. The Court fee to be paid by the mortgagor in such a suit would be for the mortgage amount of Rs. 2,000. That is the value of the suit. Suppose the court allows improvements only to the extent of Rs. 2,000 and the mortgagee files an appeal for the balance of the value of improvements. As it is, the appeal will have to be heard only by a Division Bench, though the subject matter of the appeal will come to Rs. 38,000.

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[Rao Bahadur K. A. Krishna Aiyangar.]

To avoid the anomaly, I have proposed that the word "or" should be inserted in the place of "and".

I may also bring to the notice of the Council that, in certain decided cases, the views expressed by their Honors in the High Court are rather conflicting in the matter of improvement and also opposed to the generally accepted principle and practice. In this connection, I may also submit that, according to a certain recent ruling of the High Court—fortunately not reported—it has been decided that planting of rubber is not an improvement at all and that the tenant who makes such an improvement is not entitled to any value for the same. Again, with regard to *idakkayyala* (ഇടക്കയ്യാല) it has been held by the High Court that it is not an improvement as it is made solely for agricultural purposes.

MR. P. K. NARAYANA PILLAI: May I know how this is relevant?

MR. J. JOHN NIDIRY: Because there is no enactment to guide the courts to determine the question of improvements, courts are guided by case law. So it is necessary that, in cases where large amounts of improvements are involved, the appeals should be heard by three judges.

PRESIDENT: We are confined to the value of the subject matter which does not exceed Rs. 5,000.

MR. J. JOHN NIDIRY: According to my illustration, even if the subject matter of the appeal is Rs. 5,000 or above, it could be heard by a Division Bench.

PRESIDENT: I do not think so. Is that the clause?

MR. J. JOHN NIDIRY: Yes. I would refer again to the illustration given by me. The subjectmatter of the suit in the original Court is Rs. 2,000. Plaintiff-mortgagor need not pay institution fee on the value of improvements as the law now stands. But when it comes in appeal on this question of improvements the value of the subject matter is Rs. 38,000 and yet a Division Bench may hear it because the subjectmatter of the suit is only Rs. 2,000.

MR. V. KUNJUKRISHNA PILLAI: I second the motion.

RAO BAHADUR K. A. KRISHNA AIYANGAR: I oppose the amendment. This question was discussed at length by the Select Committee and in their report they observe as follows:-

"Before proceeding to state the changes we propose to make in this clause, we are of opinion that the restriction on the class of cases to be heard by a Full Bench by requiring the value of the suit as well as of the appeal to be Rs. 5,000 and over may be modified. It is desirable that all apeals of the value of Rs 5,000 and over should be heard by a Full Bench, whatever the value of the suit. In order, however, to bring about this change, amendments in other Regulations are also necessary. This matter may herefore be considered when the other Regulations are taken in hand."

So the question was not lost sight of when the bill was being examined in detail by the Select Committee. Of course, the necessary

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changes could not be effected without making relevant changes in other statutes and so the consideration of the question is left over to be taken up after other regulations are amended. If we accept Mr. Nidiry's amendment, the position will be different from the position the Select Committee had in view. The substitution of the word "or" in place of the word "and" will bring not only appeals of the value of Rs. 5,000 before the Full Bench, but all appeals from such suits whatever be the value of the appeals.

MR. P. K. NARAYANA PILLAI: I oppose the amendment and support Mr. Krishna Aiyangar, in view of the fact that the Select Committee considered the question and found that it was impossible to effect the proposed change. The form of appeal is determined by reference to the Court Fees Regulation, the Suits Valuation Regulation and the Civil Courts Regulation. This difficulty with reference to the question of improvements was brought to a head when Mr. Justice Sadasiva Aiyar was on the Bench here. It was said that the claim on account of improvements should be treated as a counter-claim and that proper court fee should be levied on the claim so set up. But, subsequently, the High Court took a different view. They said that no court fee need be paid on the amount claimed by way of improvements so much so, that the form of appeal is now determined by the valuation of the claim in the plaint, disregarding the claim on account of improvements. No doubt, it leads to some anomalies. When the appeal relates exclusively to improvements it may be that an appeal of greater value will lie to the District Court and one of lesser value to the High Court. We have got now pending in the District Courts appeals in such cases, where the subjectmatter is Rs. 7,000 and Rs. 8,000 over which that court, under ordinary circumstances would not have jurisdiction. If the District Court can under the present circumstances entertain appeals the value of which is Rs. 7,000 or Rs. 8,000, it is very strange to say that appeals presented to the High Court should be heard by a Full Bench. This anomaly can be got over only when proper changes are made in other regulations also. Though I appreciate the idea underlying the amendment, I have to oppose it.

MR. V. SUBBA AIYAR: My friends Messrs. Krishna Aiyangar and Narayana Pillai have explained the situation. I will explain it a bit further. The difficulty arises ordinarily only in suits in which improvements are claimed. It is only when a plaintiff files a suit, that a defendant can claim improvements. If the suit is on a mortgage for Rs. 1,000, it is within the jurisdiction of the Munsiff and the suit is filed in the Munsiff's Court; and even if the defendant claims Rs. 50,000 as the value of improvements, the Munsift is competent to try the suit. If the suit is disposed of, an appeal lies to the District Court, and the District Court may dispose of the appeal notwithstanding the fact that the claim for improvements is Rs. 50,000, because under the Civil Courts Regulation (section 16) all appeals from the orders or decrees of the Munsiff lie to the District Court in cases where the subjectmatter of the

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[Mr. T. K Velu Pillai.]

suit is Rs. 1,000 or less. The claim for improvements is therefore immaterial. It is the value of the suit that determines the jurisdiction of the appellate Court. Even though the claim for improvement is for Rs. 50,000 in a suit the value of whose subject matter is Rs. 1,000, the District Court will have jurisdiction of the appeal arising out of that case. Where the value of the subjectmatter of the suit is above the appellate jurisdiction of the District Court, the appeal comes to the High Court. In other words, other regulations will have to be amended before the present amendment is made. If we amend this regulation alone, the District Judge will hear appeals where the value of improvement claims may be Rs. 50,000, and if he agrees with the Munsiff, there is no appeal and, on questions of fact, the parties are set at rest. If it comes to the High Court according to the amendment, three judges should sit and hear the appeal. Before we make this amendment, we should see that the jurisdiction of the District Judge in the matter should be ousted, which can be done only by amending the Civil Courts Regulation and the Suits Valuation Regulation. Therefore, until that is done, the question must be held in abeyance. I therefore oppose the amendment.

MR. JOSEPH PANJIKARAN: May I know whether he will be able to give an assurance that he could undertake to amend those regulations in the near future?

MR. V. SUBBA AIYAR: Certainly.

PRESIDENT: In view of the explanation that has been given by Mr Subba Aiyar and others, do you press the amendment, Mr. Nidiry?

MR. J. JOHN NIDIRY: Since the learned Law Member has undertaken to make the necessary changes in the other related regulations, I do not press the amendment.

The amendment was withdrawn with the leave of the Council.

MR. T. K. VELU PILLAI: I have also given notice of an amendment to clause 11. My amendment is to add the following at the end of the clause:

"Appeals in civil cases where the value of the subjectmatter in appeal is not less than Rs. 5,000 and appeals from judgments in criminal cases where the sentence awarded is one of hanging or imprisonment or transportation for life shall be heard by a Full Bench of three Judges".

The first portion of the amendment is the same as Mr. Nidiry's which has just now been discussed. With regard to that, I have to observe that the necessity of amending other regulations does not stand in the way of accepting this amendment. What we want is that appeals of a particular value should be heard and decided by three judges. I have read the fable of an Indian king who was approached for a certain favour. The king referred the man to

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the minister. The minister in turn referred him back to the king and the dodge went on for some time. A similar policy is becoming more and more common in Travancore with reference to administrative and legislative measures.

PRESIDENT: Are you speaking about the first part of the amendment? I failed to notice it unfortunately. That is identical with Mr. Nidiry's amendment. I should have asked you to speak only about the other part. Are you going to press it again?

MR. T. K. VELU PILLAI: I am for the whole amendment; but in the light of Mr. Subba Aiyar's assurance that he will take up the question early, I am prepared to abandon the first portion. But I still think that the necessity to amend other regulations should not stand in the way of accepting this amendment. Anyhow, for the sake of convenience and in the light of the assurance given by Mr. Subba Aiyar, I do not want to press that portion.

But I think I must press the other part of the amendment, and I accordingly move that the following be added at the end of clause 11:

"Appeals from judgments in criminal cases where the sentence awarded is one of hanging or imprisonment or transportation for life shall be heard by a Full Bench of three judges."

I need not labour the point that life is more valuable than property. Property only enables a man to take care of his life, so that when the legislature lays down that cases involving extensive proprietary interests should be decided only by a Full Bench of three judges, I fail to see the wisdom of allowing two judges to sit in final judgment on a question of life and death. I have come across ten cases where there has been some amount of actual dissatisfaction about the decisions. No doubt, whatever the decisions be, whatever be the amount of care that the judges take in deciding cases, there will be certain people complaining about them. But, I really fail to see why the legislature should not give people some assurance that the cases are being properly decided. I do not want to refer to particular cases, but I wish to emphasise that policy requires that justice should be administered not only well, but that it should be administered well and at the same time to the satisfaction of the parties. When two judges sit together in a bench and decide criminal cases which are very intricate and sometimes sensational, if one judge takes a particular view and if that judge happens to be the stronger of the two, naturally the other judge wheels round. When the forces are equally strong, it is very difficult to come to a conclusion. Although there is a provision to refer the matter to a third judge, it is very rarely availed of. On the other hand, when a Full Bench sits and hears such cases, there is greater dignity, there is greater guarantee of a correct decision and there is also greater wisdom brought to bear on the case. I need not mention that three heads are very often wiser than two. I really cannot find any reason why this should not be done. We have enough judges. Government have been so liberal that, whenever an additional judge is asked for, they readily grant the request. The number of cases in which people

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[President.]

are sentenced to hanging or imprisonment for life is not very large. There may be only a few cases every year. Sir, a dying man must be given at least the satisfaction of feeling that all that is humanly possible for him has been done, and that his case has been adjudicated upon by a bench of three judges, which, after all, is more solemn, more imposing, and, I would also say, more wise than two judges. As I said, life is very much more important than property. So I press this amendment for the kind acceptance of the Council.

With your permission, Sir, I wish to urge one more point. The matter is different in British India. If there is any grave case of miscarriage of justice, there is the Judicial Committee of the Privy Council to find out and correct mistakes. But, in Travancore, there is no such guarantee. Although certain decisions have by law to be confirmed by His Highness the Maha Raja, that power has become more or less formal, so that in a State like Travancore which is self-centred and which cannot look up to the Judicial Committee of the Privy Council to correct mistakes, I think that the double guarantee of a Full Bench should be given, as regards the cases mentioned in the amendment.

MR. K. PARAMESVARAN PILLAI: I second the amendment.

RAO BAHADUR K. A. KRISHNA AIYANGAR: Sir, I think there is much to be said in favour of the position taken up by Mr. T. K. Velu Pillai, *viz.*, that in cases of appeals against sentences of death or imprisonment for life, it is desirable to have them heard by a bench of three judges. But, as regards transportation for life, I doubt whether the Travancore Penal Code provides for any such punishment. I think it only provides for imprisonment for life.

MR. T. K. VELU PILLAI: I am prepared to withdraw that portion.

RAO BAHADUR K. A. KRISHNA AIYANGAR: In the matter of appeals against a sentence of death or imprisonment for life, the matter requires consideration by a bench of three judges. Human life is certainly quite as valuable as a property worth Rs. 5,000. Though, till now, sentences of death and life imprisonment have been revised by a bench of two judges, I find no argument against the propriety of the course suggested by Mr. Velu Pillai. So far as the amendment relates to sentence of death and life imprisonment, I would support it.

MR. K. P. RAMAN PILLAI: I sympathise very much with the humane sentiments expressed by Mr. T. K. Velu Pillai. Of course, if the amendment is carried, no doubt, the Finance Member might come to us with a supplementary demand for appointing a judge or two more. Besides that, from a practical point of view it is better that two judges hear the case. In the original court, if one judge sentences the accused to be hanged, it gives sufficient trouble to the client and the vakil. If a third judge were to be added in the High Court, I fear there would be very few chances.

PRESIDENT: Chances for whom?

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MR. K. P. RAMAN PILLAI: For the unfortunate man (*laughter*) owing to greater scrutiny by three heads. (*Laughter.*) I would rather have a culprit let off than an innocent man hanged. In some countries they have advanced so far as to contend that no guilty person should be let loose on society at any risk. But I think, so far as we are concerned, we might rest content with the dictum that no innocent man should be hanged even if ninety-nine guilty should escape thereby.

MR. A. HOOGEWERF: Instead of having two judges, why not have one? (*Laughter.*) Then there may be many chances of letting off.

MR. K. P. RAMAN PILLAI: Even as matters now stand, there is plenty of arrears, so that, from a practical standpoint, especially from the point of view of trouble to the vakil and the client concerned, I would say that it is enough to have two judges.

MR. V. SUBBA AIYER: Sir, in the case of civil appeals, we have got the old remnant of the Royal Appeal where three judges are sitting and the provision is only a reiteration of that. So far as sentences in criminal cases are concerned, I do not know whether, even if the amendment be accepted, it will be of use to my friend Mr. Velu Pillai, because all sentences of death or of imprisonment for life passed by a Sessions Judge have to be confirmed by the High Court. When they are referred to the High Court, they are called referred trials, and, whether the accused appeals or not, the High Court has to go into it. A Division Bench does it ordinarily. Such being the case, accepting this amendment by itself will not be enough. Ordinarily, when two judges differ on a question of fact, they refer the matter to a third judge. I do not think that my friend will get much benefit.

MR. T. K. VELU PILLAI: I do not want to get the benefit. The accused may get the benefit.

PRESIDENT: He is putting it figuratively.

MR. V. SUBBA AIYAR: I mean that the benefit of the amendment will not go to the prisoner. It is said that if one of the judges is stronger he carries the other with him. If he is the strongest of the three, he may carry the other two also. I do not think that there is much in that argument. The object of every Division Bench of two or three judges is that they will confer and discuss and ultimately come to a conclusion. From that we cannot infer that the strongest judge is able to carry the others to his side. Probably, eveywhere it is so. And a stronger judge will perhaps be able to give better arguments, and if so he will be able to get round the other judges.

MR. A. HOOGEWERF: If both the judges are weak, what will happen? (*Laughter.*)

PRESIDENT: You are bringing in a conundrum. We do not want conundrums, Mr. Hoogewerf.

MR. V. SUBBA AIYAR: I do not think that the number is going to improve the situation. Everybody is supposed to be strong and independent and able to exercise his judgment.

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[Mr. T. K. Velu Pillai.]

MR. T. K. VELU PILLAI: If that be the argument, why not two judges alone hear the Full Bench civil cases?

MR. V. SUBBA AIYAR: That, I have already pointed out, is the remnant of the old Royal Appeal.

MR. T. K. VELU PILLAI: Why not do away with it?

MR. V. SUBBA AIYAR: Inasmuch as that privilege has been exercised, it has not been attempted to be curtailed. In other cases, if there is a difference of opinion, the matter is referred to a third judge, and the opinion of the majority shall prevail. The same is the case where three judges sit. Strictly speaking, that does not make any difference. I do not see how it is logical. Since the other provision has been in vogue for a long time, it is left as it is. I am not aware of any place where more than two judges hear cases ordinarily. It is said that there is the Privy Council to correct mistakes as regards the cases in British India. They do not interfere on questions of fact. On questions of law, if two judges agree, the third judge need not. The amendment does not affect referred cases where, if there is no appeal within fifteen days, the same thing will have to be heard by two judges. The amendment, as it stands, will not materially advance the object which my friend has in view.

MR. T. K. VELU PILLAI: Mr. Subba Aiyar concedes that two judges are better than one; and logically, three judges should be better than two. I am only asking for the due protection of the rights of His Highness' subjects. When a man is hauled up before a court, because the Sessions Court enters a conviction against him, he should not be made to take the chance of his appeal being heard by two judges. I do not want to emphasise this point any further. But I think that the chances of justice being done to him are greater when three judges sit and hear his appeal.

MR. A. HOOGEWERF: If two judges agree as to an opinion, it is all right. If they disagree, a third judge comes in. If two judges go against one, how is the situation improved?

MR. T. K. VELU PILLAI: With regard to this question, I have merely to say that a bench of three judges means more deliberation, especially in a country like Travancore where there are no jurymen or assessors and where a judge has to go into questions of fact and questions of law. I think that we should at least give the prisoner the chance of the best tribunal that we can possibly give. Mr. Subba Aiyar's argument does not enable me to change my original position. It does not proceed on the ground of further expenditure or on the ground of principle. He merely says that the prisoner's position would not be better simply because three judges hear a case instead of two. I think that justification is one which I do not want to contest at this stage. But I should say that it does not help my friend. After all, Sir, I ask the members of this Council what they lose by insisting on three judges hearing the

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appeals in these grave cases. When very often a culprit is to be hanged, when all further chance of continuing this pleasing existence is denied to him, why, if there is any loophole, any chance of escape, he should not be allowed to be heard by three judges, is a matter which passes my comprehension.

MR. V. SUBBA AIYAR: Mr. Raman Pillai says he will have no chance.

MR. T. K. VELU PILLAI: Mr. Raman Pillai does not subscribe to any particular position. I can understand what is uppermost in his mind. He only put it ironically. Therefore Mr. Subba Aiyar cannot take shelter under Mr. Raman Pillai's attitude. We are not put to any serious expenditure by adopting this amendment, so that, as a measure of policy and in the interests of protection of life and having regard to the fact that the Council has made up its mind to say that cases involving Rs. 5,000 should be heard by three judges, I earnestly appeal to the sense of justice and to the sense of mercy of this Council to accept the amendment, which will confer manifold blessings upon the subjects of His Highness the Maha Raja.

MR. V. SUBBA AIYAR: Mr. T. K. Velu Pillai was very eloquent in his appeal to the mercy of this House. But I do not think there is any question of mercy here. If the House is satisfied that there will be much to be gained by three judges hearing the appeals, there will be something. On the other hand, as I said, whether it be three judges or two judges, the result will be the same, because, if two judges agree, their opinion is final. If they disagree, they refer the matter to a third judge. It is not of any consequence whether you have two judges or three judges. I do not think that anything will be gained by having three judges in such cases. Mr. Velu Pillai has not been able to reply to the other question, *i. e.*, in regard to referred cases. As the amendment stands, it will not apply to such cases.

MR. T. K. VELU PILLAI: May I ask whether a verbal alteration will not remedy the evil?

PRESIDENT: It is too late now. Do you press your amendment?

MR. T. K. VELU PILLAI: Yes, Sir.

PRESIDENT: The question is that the following be inserted at the end of clause 11:

"Appeals from judgments in criminal cases where the sentence awarded is one of hanging or imprisonment or transportation for life shall be heard by a full Bench of three Judges".

The amendment was put to the vote and lost, 19 voting *for* and 20 *against*.

PRESIDENT: There are no further amendments. The question is that clauses 11 to 17 stand part of the bill.

The motion was put to the vote and carried.

Clauses 11 to 17 were added to the bill.

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[Mr. P. K. Narayana Pillai.]

MR. V. SUBBA AIYAR: I beg to move that the Bill as passed by the Council be read on a future day of which notice will be given.

MR. S. PARAMESVARA AIYAR: I second the motion.

The motion was put to the vote and carried.

THE TRAVANCORE EZHAVA BILL.

PRESIDENT: We shall now resume the discussion on the Ezhava Bill.

MR. V. SUBBA AIYAR: Sir, we had been discussing about the introduction of an additional clause to enable Government to exempt certain classes of people among the Ezhava community who are not willing to be governed by certain provisions of this bill. After considering the matter and after discussing it with the members of the House, I am inclined to make some changes in the clause already moved by me. I accordingly move that the following be substituted for that clause:

Add the following as clause 33:

(1) On an application made within six months from the commencement of this Regulation,

i. by an individual member of an Ezhava *tarwad* with reference to the provisions of Part IV or

ii. by a majority of the adult members of such *tarwad* with reference to the provisions of Part VII (i),

the Government may, after making such enquiry as may be necessary and on being satisfied as to the truth of the application, exempt by a notification in the Government Gazette such individual member or *tarwad*, as the case may be, from the operation of the said provisions of the Regulation.

(2) On an application made by

i. the individual member or

ii. a majority of the members of the *tarwad*

exempted under sub-section (1), the Government may, after making such enquiry as may be necessary and after being satisfied as to the truth of the application, revoke such exemption by a notification in the Government Gazette.

MR. N. NILAKANDA PILLAI: I second the motion.

MR. C. P. KOCHUKUNJU PILLAI: I second the motion.

PRESIDENT: It has already been seconded. May I take it that it is accepted by the Council?

MR. P. K. NARAYANA PILLAI: I beg to move an amendment to this amendment.

PRESIDENT: Well, I must know what the amendment is.

MR. P. K. NARAYANA PILLAI: I only want the addition of one word. The community itself is divided into three classes, pure *makkathayees*, *marumakkathayees*, and the *misravazhi* class of people. In the present instance, the opposition that has been offered to this particular measure originated from the third class. It is they who have raised objections with reference to certain provisions of the bill and not

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